

AMENDED IN ASSEMBLY MAY 19, 2016
AMENDED IN ASSEMBLY MARCH 29, 2016
CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1771

Introduced by Assembly Member O'Donnell

February 3, 2016

An act to amend Sections 653.22 and 653.23 of, and *to repeal* Section 653.26 of, the Penal Code, *and to amend Section 602 of the Welfare and Institutions Code*, relating to prostitution.

LEGISLATIVE COUNSEL'S DIGEST

AB 1771, as amended, O'Donnell. Prostitution.

~~Existing~~

(1) *Existing* law makes a person who directs, supervises, recruits, or otherwise aids another person in the commission of an act of prostitution, or who collects or receives all or part of the proceeds earned from an act of prostitution committed by another person, guilty of a misdemeanor that is punishable by imprisonment in a county jail for no more than 6 months, by a fine not exceeding \$1,000, or by both that imprisonment and fine. Existing law specifies circumstances that may be used to determine if a person has committed the offense, including repeatedly speaking or communicating with another person, or repeatedly or continuously monitoring or watching another person, who is loitering in a public place with the intent to commit prostitution.

This bill would establish additional circumstances that may be used to determine if a person has committed that offense, including, but not limited to, repeatedly speaking or communicating with, or repeatedly

or continuously monitoring or watching, another person who solicits or agrees to engage in any act of prostitution.

The bill would also increase the punishment for a person who directs, supervises, recruits, or otherwise aids another person in the commission of an act of prostitution, or who collects or receives all or part of the proceeds earned from an act of prostitution committed by another person, to a misdemeanor punishable by imprisonment in a county jail for no more than one year, by a fine not exceeding \$1,000, or by both that imprisonment and fine. The bill would make additional conforming changes.

By increasing the term in a county jail from no more than 6 months to no more than one year, this bill would impose a state-mandated local program.

(2) Under existing law, a person who is under 18 years of age when he or she violates the law may be adjudged a ward of the court.

This bill would authorize a court to dismiss the petition against the juvenile upon a finding that he or she committed certain acts of prostitution due to coercion or duress, as defined.

~~The~~

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 653.22 of the Penal Code is amended to
2 read:

3 653.22. (a) It is unlawful for any person to loiter in any public
4 place with the intent to commit prostitution. This intent is
5 evidenced by acting in a manner and under circumstances which
6 openly demonstrate the purpose of inducing, enticing, or soliciting
7 prostitution, or procuring another to commit prostitution.

8 (b) Among the circumstances that may be considered in
9 determining whether a person loiters with the intent to commit
10 prostitution are that the person:

1 (1) Repeatedly beckons to, stops, engages in conversations with,
2 or attempts to stop or engage in conversations with passersby,
3 indicative of soliciting for prostitution.

4 (2) Repeatedly stops or attempts to stop motor vehicles by
5 hailing the drivers, waving arms, or making any other bodily
6 gestures, or engages or attempts to engage the drivers or passengers
7 of the motor vehicles in conversation, indicative of soliciting for
8 prostitution.

9 (3) Has been convicted of violating this section, subdivision (a)
10 or (b) of Section 647, or any other offense relating to or involving
11 prostitution, within five years of the arrest under this section.

12 (4) Circles an area in a motor vehicle and repeatedly beckons
13 to, contacts, or attempts to contact or stop pedestrians or other
14 motorists, indicative of soliciting for prostitution.

15 (5) Has engaged, within six months prior to the arrest under this
16 section, in any behavior described in this subdivision, with the
17 exception of paragraph (3), or in any other behavior indicative of
18 prostitution activity.

19 (c) The list of circumstances set forth in subdivision (b) is not
20 exclusive. The circumstances set forth in subdivision (b) should
21 be considered particularly salient if they occur in an area that is
22 known for prostitution activity. Any other relevant circumstances
23 may be considered in determining whether a person has the
24 requisite intent. Moreover, no one circumstance or combination
25 of circumstances is in itself determinative of intent. Intent must
26 be determined based on an evaluation of the particular
27 circumstances of each case.

28 (d) A violation of this section is a misdemeanor.

29 SEC. 2. Section 653.23 of the Penal Code is amended to read:

30 653.23. (a) It is unlawful for any person to do either of the
31 following:

32 (1) Direct, supervise, recruit, or otherwise aid another person
33 in the commission of a violation of subdivision (b) of Section 647
34 or subdivision (a) of Section 653.22.

35 (2) Collect or receive all or part of the proceeds earned from an
36 act or acts of prostitution committed by another person in violation
37 of subdivision (b) of Section 647.

38 (b) Among the circumstances that may be considered in
39 determining whether a person is in violation of subdivision (a) are
40 that the person does the following:

1 (1) Repeatedly speaks or communicates with another person
2 who is acting in violation of subdivision (b) of Section 647 or
3 subdivision (a) of Section 653.22.

4 (2) Repeatedly or continuously monitors or watches another
5 person who is acting in violation of subdivision (b) of Section 647
6 or subdivision (a) of Section 653.22.

7 (3) Repeatedly engages or attempts to engage in conversation
8 with pedestrians or motorists to solicit, arrange, or facilitate an act
9 of prostitution between the pedestrians or motorists and another
10 person who is acting in violation of subdivision (a) of Section
11 653.22.

12 (4) Repeatedly stops or attempts to stop pedestrians or motorists
13 to solicit, arrange, or facilitate an act of prostitution between
14 pedestrians or motorists and another person who is acting in
15 violation of subdivision (a) of Section 653.22.

16 (5) Circles an area in a motor vehicle and repeatedly beckons
17 to, contacts, or attempts to contact or stop pedestrians or other
18 motorists to solicit, arrange, or facilitate an act of prostitution
19 between the pedestrians or motorists and another person who is
20 acting in violation of subdivision (a) of Section 653.22.

21 (6) Receives or appears to receive money from another person
22 who is acting in violation of subdivision (b) of Section 647 or
23 subdivision (a) of Section 653.22.

24 (7) Engages in any of the behavior described in paragraphs (1)
25 to (6), inclusive, in regard to, or on behalf of, two or more persons
26 who are in violation of subdivision (a) of Section 653.22.

27 (8) Has been convicted of violating this section, subdivision (a)
28 or (b) of Section 647, subdivision (a) of Section 653.22, Section
29 236.1, 266h, or 266i, or any other offense relating to or involving
30 prostitution within five years of the arrest under this section.

31 (9) Has engaged, within six months prior to the arrest under
32 subdivision (a), in any behavior described in this subdivision, with
33 the exception of paragraph (8), or in any other behavior indicative
34 of prostitution activity.

35 (c) The list of circumstances set forth in subdivision (b) is not
36 exclusive. The circumstances set forth in subdivision (b) should
37 be considered particularly salient if they occur in an area that is
38 known for prostitution activity. Any other relevant circumstances
39 may be considered. Moreover, no one circumstance or combination
40 of circumstances is in itself determinative. A violation of

1 subdivision (a) shall be determined based on an evaluation of the
2 particular circumstances of each case.

3 (d) This section does not preclude the prosecution of a suspect
4 for a violation of Section 236.1, 266h, or 266i, or for any other
5 offense, or for a violation of this section in conjunction with a
6 violation of Section 236.1, 266h, or 266i, or any other offense.

7 (e) A violation of this section is a misdemeanor punishable by
8 imprisonment in a county jail not to exceed one year, by a fine not
9 to exceed one thousand dollars (\$1,000), or by both that
10 imprisonment and fine.

11 SEC. 3. Section 653.26 of the Penal Code is repealed.

12 SEC. 4. *Section 602 of the Welfare and Institutions Code is*
13 *amended to read:*

14 602. (a) Except as provided in subdivision (b), ~~any~~ a person
15 who is under 18 years of age when he or she violates any law of
16 this state or of the United States or any ordinance of any city or
17 county of this state defining crime other than an ordinance
18 establishing a curfew based solely on age, is within the jurisdiction
19 of the juvenile court, ~~which may adjudge such person to be court~~
20 ~~and may be adjudged~~ a ward of the court.

21 (b) Any person who is alleged, when he or she was 14 years of
22 age or older, to have committed one of the following offenses shall
23 be prosecuted under the general law in a court of criminal
24 jurisdiction:

25 (1) Murder, as described in Section 187 of the Penal Code, if
26 one of the circumstances enumerated in subdivision (a) of Section
27 190.2 of the Penal Code is alleged by the prosecutor, and the
28 prosecutor alleges that the minor personally killed the victim.

29 (2) The following sex offenses, if the prosecutor alleges that
30 the minor personally committed the offense, and if the prosecutor
31 alleges one of the circumstances enumerated in the One Strike
32 law, subdivision (d) or (e) of Section 667.61 of the Penal Code,
33 applies:

34 (A) Rape, as described in paragraph (2) of subdivision (a) of
35 Section 261 of the Penal Code.

36 (B) Spousal rape, as described in paragraph (1) of subdivision
37 (a) of Section 262 of the Penal Code.

38 (C) Forcible sex offenses in concert with another, as described
39 in Section 264.1 of the Penal Code.

1 (D) Forcible lewd and lascivious acts on a child under 14 years
2 of age, as described in subdivision (b) of Section 288 of the Penal
3 Code.

4 (E) Forcible sexual penetration, as described in subdivision (a)
5 of Section 289 of the Penal Code.

6 (F) Sodomy or oral copulation in violation of Section 286 or
7 288a of the Penal Code, by force, violence, duress, menace, or fear
8 of immediate and unlawful bodily injury on the victim or another
9 person.

10 (G) Lewd and lascivious acts on a child under 14 years of age,
11 as defined in subdivision (a) of Section 288, unless the defendant
12 qualifies for probation under subdivision (d) of Section 1203.066
13 of the Penal Code.

14 *(c) (1) Notwithstanding subdivision (a), the juvenile court may*
15 *dismiss a petition upon a finding that the juvenile who is alleged*
16 *to have violated Section 653.23 of the Penal Code did so due to*
17 *coercion or duress.*

18 *(2) For purposes of this subdivision, the following definitions*
19 *apply:*

20 *(A) "Coercion" means a scheme, plan, or pattern intended to*
21 *cause a person to believe that failure to perform the act would*
22 *result in serious harm to, or physical restraint against, a person;*
23 *the abuse or threatened abuse of legal process; debt bondage; or*
24 *providing and facilitating the possession of a controlled substance*
25 *to a person with the intent to impair the person's judgment.*

26 *(B) "Duress" means a direct or implied threat of force, violence,*
27 *danger, hardship, or retribution sufficient to cause a reasonable*
28 *person to acquiesce in or perform an act that he or she would*
29 *otherwise not have submitted to or performed; a direct or implied*
30 *threat to destroy, conceal, remove, confiscate, or possess an actual*
31 *or purported passport or immigration document of the victim; or*
32 *knowingly destroying, concealing, removing, confiscating, or*
33 *possessing an actual or purported passport or immigration*
34 *document of the victim.*

35 *(C) "Serious harm" means any harm, whether physical or*
36 *nonphysical, including, but not limited to, psychological, financial,*
37 *or reputational harm, that is sufficiently serious, under all*
38 *surrounding circumstances, to compel a reasonable person of the*
39 *same background and in the same circumstances to perform or to*

1 *continue to perform labor, services, or commercial sexual acts in*
2 *order to avoid incurring that harm.*

3 ~~SEC. 4.~~

4 SEC. 5. No reimbursement is required by this act pursuant to
5 Section 6 of Article XIII B of the California Constitution because
6 the only costs that may be incurred by a local agency or school
7 district will be incurred because this act creates a new crime or
8 infraction, eliminates a crime or infraction, or changes the penalty
9 for a crime or infraction, within the meaning of Section 17556 of
10 the Government Code, or changes the definition of a crime within
11 the meaning of Section 6 of Article XIII B of the California
12 Constitution.